

## **REMARKS**

This paper is filed in response to the Office Action mailed May 17, 2004 in which claims 1-57 were pending in the above-referenced application. Claims 8, 9, 14, 17, 28, and 37 remain withdrawn from consideration. Claims 1-2, 6, 12, 13, 16, 40-42, and 57 were rejected. Claims 18-27, 29-36, 38, 39 and 43-56 were allowed and claims 3-5, 7, 10, 11 and 15 were objected to as dependent upon a rejected base claim.

Independent claims 1, 40 and 57 were rejected based on U.S. Patent No. 5,188,638 which issued to Tzakis. By this paper, independent claims 1, 40, and 57 have been amended. Dependent claim 9 has been amended to correct a typographical error.

Claim 40 has been amended to recite that: "the first holding means and the second holding means are adapted to cooperate together in holding the first vessel between the first holding means and the second means." Claim 40 has also been amended to recite that "the locking means enables the first vessel to continue being held between the first holding means and the second holding means after anastomosis of the first vessel and the second vessel."

Applicants respectfully disagree with the characterization of lip 22 as first holding means and staple cartridges 38 as second holding means. Lip 22 merely fits into groove 36 of jaws 30 and 31 for stapling alignment. Staple cartridges 38 abut a vessel only for delivery of the staples. Neither lip 22 or staple cartridges 38 hold either vessel. In fact, both vessels are temporarily held by sutures 20 and 21 to anvil 10. On this basis, U.S. Patent No. 5,188,638 fails to teach or suggest a second plate having second

holding means. Accordingly, a second vessel opening defined by second holding means is also not taught or suggested. Further, U.S. Patent No. 5,188,638 fails to disclose first holding means and second holding means which cooperate together to hold a first vessel and a second vessel between the first holding means and second holding means.

Claim 40 also recites that the first vessel portion is held without “reliance on penetration of the first vessel portion.” While the claimed apparatus may result in inadvertent penetration through or into the first vessel portion, penetration is not relied on to hold the first vessel portion. Since both vessels in U.S. Patent No. 5,188,638 are held by sutures, penetration of the vessels is clearly required and relied on to hold the vessels.

The Office Action does not indicate what components in U.S. Patent No. 5,188,638 might comprise locking means. In U.S. Patent No. 5,188,638, jaws 31 and 32 of instrument 30 temporarily enable two vessels to be positioned between anvil 10 and staple cartridges 38. As indicated at column 2, lines 52-57, instrument 30 (which includes jaws 30 and 31 and staple cartridges 38) is immediately removed after anastomosis of the vessels as is anvil 10. In contrast, claim 40 recites that the locking means enables “the first vessel to continue being held between the first holding means and the second holding means after anastomosis of the first vessel and the second vessel.” Staples 37 also do not teach or suggest the recited locking means as staples 37 do not enable “the first vessel to continue being held between the first holding means

and the second holding means after anastomosis of the first vessel and the second vessel.”

Claims 1 and 57 both include limitations regarding the “uneven distribution of force against the first vessel portion.” In the Office Action, it was indicated that Figure 4 of U.S. Patent No. 5,188,638 shows that the shape of the holding means “causes an uneven distribution of force down the length of the vessel wall.” Embodiments disclosed in the present application were then contrasted in the Office Action as causing an uneven distribution of force along the cross-section of the vessel. The observation was made in the Office Action that such a difference had not been claimed.

Applicants, respectfully disagree with the position that either anvil 10 and staple cartridges 38 have configurations which contribute to an uneven distribution of force against the first vessel portion. As indicated above, staple cartridges 38 merely abut against a vessel which is adjacent to another vessel for delivering staples through the vessels. Also, the vessels or organs in Figure 4 of U.S. Patent No. 5,188,638 show no compression which might indicate an application of force by either anvil 10 or staple cartridges 38. Since no force is applied there cannot be an uneven distribution of force.

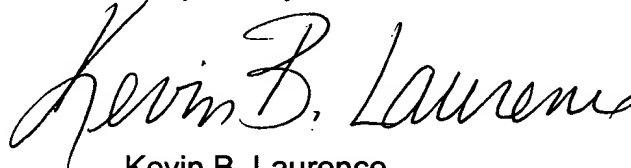
While not necessary to overcome the rejection based on U.S. Patent No. 5,188,638, claim 1 and claim 57 have been amended to more precisely recite the limitation with respect to “the uneven distribution of force.” Claim 1 now recites that the uneven distribution of force occurs “around the first vessel opening.” Also, independent claim 57 now recites that first compression plate and the second compression plate have configurations which cause an uneven distribution of force against the first vessel

portion and the second vessel portion "at an interface between the first vessel and the second vessel. . ."

In view of the foregoing, it is believed that all of the claims are patentable in their present form, and a notice of allowance for this case is respectfully requested. As mentioned above, if the Examiner finds any remaining impediment to the prompt allowance of this application, please contact the undersigned attorney.

DATED this 17<sup>TH</sup> day of AUGUST 2004.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kevin B. Laurence".

Kevin B. Laurence  
Attorney for Applicant  
Registration No. 38,219

STOEL RIVES LLP  
One Utah Center  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 578-6932  
Facsimile: (801) 578-6999

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